IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.193/2002

Kamla W/o Shri Amar Singh
Versus
The State of Rajasthan through P.P.

Date of Judgment :::: 1st May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri S.S. Hora, with
Shri T.C. Sharma, Counsel for accused-appellant
Smt. Nirmala Sharma,P.P., for the State

//Reportable//

By the Court:-

The Additional District & Sessions Judge No.1 (Fast Track) Kota, vide impugned judgment and order dated 30th January, 2002, in Sessions Case No.84/2001, convicted and sentenced the accused-appellant under Section 304-B, IPC, to undergo 7 years rigorous imprisonment.

Briefly stated the facts of the case are that initially PW-1 Amar Dhwaj Singh, father of deceased Usha, lodged a written-report on 7.8.2000 at 9.50 AM at Police Station Udyog Nagar, Kota, wherein it was written that about one-and-half year ago he got his daughter Usha married with Raj Bahadur Singh. His daughter died in a

suspicious circumstance at her matrimonial house. She is hanged on fan in her room. The S.H.O. registered the report under Section 176, Cr.P.C., and forwarded it to the Additional District Magistrate for enquiry. The postmortem of deceased Usha was conducted on the same day wherein it was opined that her death has been due to asphyxia as a result of antemortem hanging.

Subsequently on 8.8.2000 at about 4.15 PM another written report (Exhibit P-4) was lodged by PW-1 Amar Dhwaj Singh at Police Station Udyog Nagar, Kota, wherein it was mentioned that marriage of his daughter Usha Singh took place on 4.12.1998 with Raj Bahadur. After some time of marriage, her in-laws started harassing her because of less dowry. The allegations were alleged against mother-in-law Kamla Devi, brother-in-law (Dewar) Rai Bahadur and sister-in-law (Nanad) Rakhi Devi. It was alleged that a demand of Rs.50,000/- (Rupees fifty thousand) was made but he could gave only Rs.10,000/- in dowry and remaining amount Rs.40,000/- has not been given. As and when he went to meet Usha Singh, her mother-in-law Kamla Devi told him as to when the remaining amount Rs.40,000/- will be paid. It was also written that on 5.8.2000 he had gone to bring Usha Singh for Rakshabandhan festival but she was not sent and on 7.8.2000 at about 8.15 AM he

heard about death of his daughter. On the basis of this information, Mahila Police Station, Kota City, registered FIR No.143/2000 under Sections 304-B and 406, IPC.

After completion of investigation, the police filed a charge-sheet against the accused-appellant as well as co-accused Rai Bahadur Singh.

The trial court framed charge against both the accused under Section 304-B, IPC. The trial court, after considering the evidence of both the parties on the record, acquitted co-accused Rai Bahadur, but convicted and sentenced the accused-appellant, as mentioned above.

The learned counsel Shri S.S. Hora, appearing on behalf of the accused-appellant, contended that initially report Exhibit P-1 was lodged on 7.8.2000 at 9.50 AM, wherein nothing was mentioned regarding demand of dowry or assault with or harassment of deceased by her in-laws. Thereafter FIR No.216/2000 was registered at the instance of Jaswant Singh against Bhanwar Singh and two brothers of deceased Usha at Police Station Udyog Nagar, Kota City, at 7.15 PM, under Sections 341, 323, 435, IPC (Exhibit D-8) and only in counter thereto the another written-report (Exhibit P-4) was lodged by PW-1 Amar Dhwaj Singh on 8.8.2000 at 4.15 PM mentioning therein the allegations regarding demand of dowry and harassment of

the deceased by her in-laws otherwise there was no such harassment of the deceased for or in connection with demand of dowry.

The learned counsel for the accused-appellant further contended that in Exhibit P-4 an allegation was also made against deceased Usha's sister-in-law Rakhi Devi, but the police, during investigation of the case, found the said allegation false and did not file challan against her. Therefore, the allegations of complainant were found to be false partly by the police itself and the trial court, after appreciation of prosecution evidence, on the same set of evidence, acquitted co-accused Rai Bahadur, and convicted the present appellant, which is per-se illegal and the appellant is liable to be acquitted.

He further contended that there is no independent witness in the present case to prove the charge against the appellant. All the witnesses, examined on behalf of the prosecution, were only interested witnesses, and their testimony ought to have been discarded by the trial court. He, therefore, contended that the impugned judgment passed by the trial court be set-aside and the benefit of doubt be given to the accused and the appellant be acquitted.

The learned counsel for the accused-appellant has also referred the decision of the Hon'ble Supreme Court in *Sunil Bajaj Vs. State of M.P., 2002 Cr.L.R. (SC) 225*, and contended that in absence of any specific evidence that Usha was subjected to cruelty or harassment by her mother-in-law soon before her death for or in connection with the demand of dowry, the conviction of the accused Kamla under Section 304-B, IPC, cannot be sustained. He referred Para No.11 of the judgment, which reads as under:-

> **"11. It is unfortunate that trial Court did not properly and objectively consider the evidence to reach a conclusion that the appellant was guilty of the offence. It may be also noticed here that the appellant was acquitted for the charge under Section 306 IPC. The High Court, as already stated above, did not re-appreciate the evidence as first Court of appeal on criminal side and has disposed the appeal in a summary way, confirming the order of conviction and sentence passed by the trial Court. In the light of what is stated above, in our view, both the Courts committed serious and manifest error in concluding that the appellant was guilty of the offence when the crucial and necessary ingredient that the deceased Suman was subjected to cruelty or harassment by him soon before her death for or in connection with demand of dowry was not established and also looking to the evidence and circumstances cumulatively. Under these circumstances, the impugned judgment is unsustainable as it suffers from infirmity and illegality as indicated above."**

The learned Public Prosecutor has supported the

judgment of the trial court and contended that there is no merit in any of the arguments of the learned counsel for the appellant. The reasons assigned by the trial court for conviction of the accused-appellant are perfectly justified in the eye of law and the appeal filed by the appellant be dismissed.

I have examined the record of the case and minutely scanned the judgment of the trial court.

Initially the report about death of Usha in suspicious circumstances was lodged on 7.8.2000 at 9.50 AM. Thereafter Exhibit D-8 FIR No.216/2000 was lodged on the same day at 7.15 PM by Jaswant Singh DW-5. On the next day i.e. 8.8.2000 another written report (Exhibit P-4) was again lodged by PW-1 Amar Dhwaj Singh.

The postmortem of deceased was conducted on 7.8.2000 itself and in the postmortem-report it was opined that her death has been due to asphyxia as a result of antemortem hanging. As per the evidence available on the record, it is clear that marriage of deceased Usha took place on 4.12.1998 with Raj Bahadur Singh and, Usha died within 7 years of her marriage i.e. on 7.8.2000 under abnormal circumstances. The case of the prosecution was that deceased was subjected to cruelty or harassment by her husband and relatives of husband for,

or in connection with, demand of dowry, whereas case of the defence, as per the statements of DW-1 to DW-5, is that PW-1 Amar Dhwaj Singh, the father of the deceased, came on 5.8.2000 at matrimonial house of deceased and the deceased told him that she would also go with him as she wanted to join the course of computer and computer center is nearer to her parental house, but her father refused to take her with him and that is why she became furious with her father and committed suicide by hanging herself in her room on 7.8.2000.

The investigating agency did not file charge-sheet against Rakhi and trial court acquitted co-accused Rai Bahadur. The appellant before this Court is mother-in-law of the deceased.

The charge against appellant was that she harassed the deceased after her marriage till her death for, or in connection with, demand of dowry. The trial court recorded a finding after appreciating the evidence on the record that a demand of Rs.50,000/- was made by the appellant at the time of marriage of Usha with Raj Bahadur Singh and Rs.10,000/- were given but remaining amount Rs.40,000/- was not given. On 5.8.2000 PW-1 Amar Dhwaj Singh came at matrimonial house of Usha to bring her at his home on Rakshabandhan festival but her mother-

in-law (appellant) refused to send her with him as he had not paid the remaining amount Rs.40,000/- out of Rs.50,000/-, which were demanded for dowry at the time of marriage and consequently convicted and sentenced the appellant.

The question for consideration before this Court is as to whether there was any assault or harassment to deceased by appellant, her mother-in-law, for, or in connection with, demand of dowry. Before discussing the evidence in this regard, it will be appropriate to reproduce Section 304-B, which reads as under:-

> **"304B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.**
>
> **Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).**
>
> **(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."**

Section 113-B of the Evidence Act is also relevant for the purpose of Section 304-B, IPC, therefore, Section 113-B, IPC is also reproduced as under:-

> **“113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.**
>
> **Explanation.- For the purposes of this Section, “dowry death” shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860).”**

In order to convict an accused for an offence under Section 304B, IPC, the following ingredients must be satisfied in a case:-

(1) **the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;**

(2) **such death must have occurred within 7 years of her marriage;**

(3) **soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;**

(4) such cruelty or harassment must be for

or in connection with demand of dowry.

If the aforementioned ingredients are established by acceptable evidence in a case then such death of a woman shall be called “dowry death” and such husband or his relative will be deemed to have caused her death. It is relevant to mention that punishment for the offence of dowry death u/s.304B, IPC, is imprisonment of not less than 7 years, which may extend to imprisonment for life. Normally, in a criminal case accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304B, IPC, an exception is made by deeming provision as to nature of death as “dowry death” and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution.

So far as evidence in the present case is concerned, I find that there are three statements of PW-1 Amar Dhwaj Singh (father), PW-2 Smt. Shyama (mother), PW-4 Ravindra Singh (brother) and (PW-5) Suresh Bahadur Singh ('tau' – parental uncle) – one recorded under Section 161, Cr.P.C., another recorded by Sub Divisional Magistrate while making enquiry under Section 176, Cr.P.C., and third one recorded before the trial court.

From the prosecution evidence it reveals that Raj Bahadur (husband) was not in employment at the time of his engagement with deceased, but subsequently he got employment before his marriage and thereafter the appellant demanded a dowry of Rs.50,000/-; Rs.10,000/- were given at the time of marriage and remaining amount was promised to be paid subsequently, which was not paid and there was assault with or harassment by the appellant to the deceased. Some witnesses have stated that Rs.1,00,000/- (Rupees one lac) was demanded but ultimately Rs.50,000/- were settled to be paid. Some witnesses said that one motorcycle and Rs.50,000/- both were demanded soon after getting employment by Raj Bahadur. Motorcycle and Rs.10,000/- were given in marriage but remaining amount Rs.40,000/- was promised to be given subsequently, which was not paid and there was a

consistent demand for remaining amount Rs.40,000/-, which was agreed to be given in dowry at the time of marriage.

The learned counsel for the appellant has pointed out number of minor discrepancies in the statements of the prosecution witnesses. He contended that the statement of PW-1 Amar Dhwaj Singh is contrary to his own statement recorded under Section 161, Cr.P.C., by the police as well as from the statement recorded by the Sub Divisional Magistrate under Section 176, Cr.P.C. He contended that similar is the position in respect of statements of PW-2 Shyama, PW-4 Ravindra Singh and PW-5 Suresh Bahadur Singh.

PW-1 Amar Dhwaj Singh in the statement (Exhibit D-4), recorded under Section 161 Cr.P.C., stated that at the time of marriage Raj Bahadur was not in service. Kamla Devi, Rai Bahadur and Rakhi Devi used to assault his daughter Usha Singh for demand of Rs.40,000/-. On 5.8.2000 he went to meet his daughter and they demanded Rs.40,000/- from him. It was further stated that they told him that either he should make payment of Rs.40,000/- otherwise he will see the consequences. PW-1 Amar Dhwaj Singh, in his statement (Exhibit D-5), recorded before the Sub Divisional Magistrate, it was stated that he gave sufficient dowry in marriage. He

promised to pay Rs.50,000/- in dowry and he had already paid Rs.10,000/- but he could not pay the remaining amount Rs.40,000/- as his factory had been closed. PW-1 Amar Dhwaj Singh, in his statement recorded before the Court, stated that he had paid Rs.10,000/- but could not pay the remaining amount Rs.40,000/-. Kamla Devi, Rai Bahadur Singh and Rakhi Devi used to assault her daughter for remaining amount Rs.40,000/-. He had gone to meet his daughter at her in-laws' house on 5.8.2000 to bring her but she was not sent and he was told by appellant that first he should pay Rs.40,000/- then only she will send Usha to her parental house.

PW-2 Shyama Devi in her statement before the trial court stated that Kamla Devi, Rai Bahadur and Rakhi used to assault her daughter for remaining amount Rs.40,000/-, which was agreed to be paid on account of dowry in her marriage. Her husband had gone to bring Usha on 5.8.2000 but her mother-in-law did not send her and told her husband to bring Rs.40,000/- first. Smt. Shyama Devi in her statement (Exhibit D-2) before the Sub Divisional Magistrate, stated about demand of dowry of Rs.50,000/- by appellant and payment of Rs.10,000/- at the time of marriage and promise to pay the remaining amount Rs.40,000/- subsequently, which could not be paid

and they assaulted her daughter because of non-payment of Rs.40,000/-.

PW-4 Ravindra Singh also stated that on 5.8.2000 the appellant demanded remaining amount of dowry of Rs.40,000/- from his father. PW-5 Suresh Bahadur Singh also stated that on 4.12.1998 the marriage of Usha took place wherein accused party demanded dowry. One motorcycle 'SUZUKI' and Rs.50,000/- were demanded. Motorcycle and Rs.10,000/- were given in marriage itself and remaining amount Rs.40,000/- was agreed to be paid subsequently, but the same could not be paid as PW-1 Amar Dhwaj Singh was not in a position to make the payment as his factory, where he was in employment, had been closed.

The accused-persons examined DW-1 Rai Bahadur Singh, DW-2 Smt. Kamla, DW-3 Raj Bahadur Singh, DW-4 Rajpal Singh and DW-5 Jaswant Singh, wherein they stated that there was no demand of dowry and Usha committed suicide by hanging herself for the reason that on 6.8.2000 Amar Dhwaj Singh had come to their house; Usha Singh wanted to go with her father but he refused to take her with him.

From the prosecution evidence it appears that there are number of minor contradictions in respect of amount and articles demanded as dowry at the time of

marriage but there is consistency in prosecution evidence that motorcycle was given at the time of marriage and amount of Rs.50,000/- was agreed to be paid in cash at the time of marriage but out of it Rs.10,000/- were given and remaining Rs.40,000/- could not be given and the same was agreed to be paid subsequently, but the said amount could not be paid till the date of death of Usha. From the prosecution evidence, it appears that since the date of marriage there was continuous demand of dowry of remaining amount Rs.40,000/- and mental harassment of the deceased by the appellant. So far as harassment of deceased by accused-appellant soon before her death, for or in connection with demand of dowry is concerned, it is clear that on 5.8.2000 PW-1 Amar Dhwaj Singh had been to the in-laws house of Usha to bring her at his home as Rakshabandhan festival was coming but she was not sent by the appellant Kamla by saying that first he should pay Rs.40,000/-, which were due to be paid since the time of marriage as agreed to be paid by him in dowry and then only she will see that deceased is sent at her parental house. The said conversation took place in presence of deceased herself and thereby she suffered mental agony and harassment and that is why she committed suicide by hanging herself on 7.8.2000.

I have also considered the finding of the trial court. The trial court has considered the prosecution evidence in detail and recorded a finding that there was assault or harassment of the deceased soon before her death by accused-appellant, for or in connection with demand of dowry.

After considering the entire evidence on the record as discussed above, I find that the finding of the trial court in this connection is wholly justified and I do not see any ground to interfere in it. The prosecution has proved the charge against the accused-appellant beyond all reasonable doubts and the trial court has rightly convicted the accused-appellant.

In view of the above discussion and reasons, I do not find any merit in any of the contentions of the learned counsel for the appellant and the appeal is accordingly dismissed being devoid of any merit.

(Narendra Kumar Jain), J.

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